



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/172732

PRELIMINARY RECITALS

Pursuant to a petition filed March 09, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on April 14, 2016, at Sheboygan, Wisconsin.

The issue for determination is whether the Department correctly modified the petitioner's prior authorization request for Occupational Therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], OTR

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Sheboygan County.

2. On January 25, 2016 the petitioner submitted a prior authorization request for Occupational Therapy (OT) services. She requested OT services one time per week starting February 1, 2016. The Department requested additional documentation.
3. On February 22, 2016 the Department sent the petitioner a notice stating that they had modified her prior authorization request for OT services.
4. On March 11, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
5. The petitioner is 20 years old and suffers from Limb Girdle type Muscular Dystrophy. This causes decreased range of motion.
6. The petitioner has been receiving once weekly OT services since 2009. There appears to have been a gap in 2014, however once weekly OT services resumed in 2015. This is the first modification of a prior authorization for OT services. The petitioner has a private duty nurse 24 hours per day. Her father is one of her private duty nurses.

DISCUSSION

Occupational therapy is covered by MA under Wis. Admin. Code, §DHS 107.16. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. Wis. Admin. Code, §DHS 107.16(2)(b). After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. Wis. Admin. Code, §DHS 107.02(3)(d)6. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

In reviewing a PA request the Department must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and
- (b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability; ...
3. Is appropriate with regard to generally accepted standards of medical practice; ...
6. Is not duplicative with respect to other services being provided to the recipient; ...
8. ...[I]s cost effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

For therapy to be medically necessary, a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention.

In this case the Department modified the request in part because the petitioner's provider failed to include an assessment, medical impairments, and functional limitations in objective terms. Rather, the provider discusses limited range of motion without stating the actual measurements. The Department sent this PA back to the provider for actual measurements, which the provider never submitted. Without objective or

actual measurements it is impossible to see if there has been any improvement from these years of OT therapy. I understand that the petitioner has a degenerative disorder, however, without objective, actual measurements it is impossible to tell if this OT therapy meets the definition of medically necessary for the MA program. The Department appears to have given the petitioner every benefit of the doubt by approving 13 sessions over a six month period. This is reasonable given the petitioner's medical condition and history as well as a need for a carry-over home therapy program.

Following the hearing, the petitioner's provider submitted a letter stating:

Due to her medical fragility, as well as the progressive nature of her disease, therapy services with highly skilled physical and occupational therapists familiar with muscular dystrophy is of benefit to her for the purposes of preserving muscle and joint function, preventing further contractures and skin breakdown, and adapting alternative methods to perform her daily activities, within the limits of her musculoskeletal impairments as well as her cardiorespiratory limitations. While her family is dedicated to assisting her in any ways they can, they are not medically trained and her medical fragility warrants regular contact with trained professionals.

With respect the PT services noted in that letter, the letter was inconsistent with previous information this provider included on the prior authorization request for PT services. I further note that the petitioner's gets 24 hours per day of private duty nursing. Her father is one of her private duty nurses. There is a home PT program that the petitioner's father performs with her. I see no reason that there cannot be a home therapy program for OT services. This would be done by trained medical professionals, rather than a parent who has little to no medical training or experience.

The petitioner's mother testified that some of the stretching could only be done by a therapist. This addressed the PT services, not the OT services involving mainly the petitioner's wrists. I see no medical reason that a nurse could not perform a home therapy program in conjunction with bi-weekly services from a trained Occupational Therapist.

CONCLUSIONS OF LAW

The Department correctly modified the petitioner's prior authorization request for Occupational Therapy.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of May, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 27, 2016.

Division of Health Care Access and Accountability